

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LESLIE NACHMAN,

Plaintiff,

v.

REGENOCYTE WORLDWIDE, INC, et al.,

Defendants.

Case No. 2:13-cv-00319-MMD-PAL

ORDER

(Def's' Motion to Dismiss – dkt. no. 23;
Def's' Motion Motion to Transfer
– dkt. no. 24)

I. SUMMARY

Before the Court are Defendants Michael R. Calcaterra and Intercellular Sciences, LLC's ("Moving Defendants") Motion to Dismiss (dkt. no. 23) and Motion to Transfer (dkt. no. 24).¹ For the reasons set out below, the motions are denied.

II. BACKGROUND

The following allegations are taken from the Complaint. Plaintiff Leslie Nachman is, and was at all relevant times, a resident of Clark County, Nevada. Plaintiff wired money from Las Vegas, Nevada, to Defendant Regenocyte, LLC,² a Florida company, for the purposes of receiving stem cell treatment for his cardiac condition. Regenocyte accepted the payment and provided treatment services in 2009. In 2012, Regenocyte and Defendant Dr. Zannos Grekos, a physician working with Regenocyte, determined that Plaintiff's condition required further treatment. Around this time, Regenocyte

¹The Motion to Dismiss and Motion to Transfer are identical. For the purposes of this Order, the Court will cite to the Motion to Dismiss (dkt. no. 23) only. This Order resolves both motions.

²Regenocyte, LLC, along with Defendants Regenocyte Worldwide, Inc. and Regenocyte Therapeutic, LLC, are hereby referred to as "Regenocyte."

1 stopped being an active entity in Florida and Defendant Intercellular Sciences, LLC,
2 ("Intercellular") began offering similar services and treatments at the same Florida
3 address with the same employees and contractors. Intercellular is also a Florida
4 company. In September, 2012, a representative of Intercellular provided Plaintiff with a
5 contract for a second round of stem cell treatment with Regenocyte, and Plaintiff signed.
6 Plaintiff wired money to Regenocyte for the second round of treatment. Between
7 September 2012 and November 2012, Defendants Regenocyte, Intercellular, Dr. Grekos
8 and Michael R. Calcaterra represented that an Israeli lab where Plaintiff's stem cells
9 would be processed was set to re-open and that treatment would be scheduled.
10 Defendants knew, however, that the Israeli lab was closed and that Defendants would
11 not be able to perform the treatment services. Eventually, Plaintiff paid another facility for
12 the treatment. Regenocyte and Intercellular have refused to return Plaintiff's money.

13 After Plaintiff received his first treatment in 2009, he recorded a video testimonial.
14 Regenocyte posted videos of Plaintiff on its website and used his likeness in promotional
15 and advertising materials. Plaintiff never signed a written agreement to authorize the use
16 of his videos and images. After Regenocyte failed to perform the second round of
17 treatment and refused to return Plaintiff's money, Plaintiff demanded that Regenocyte
18 remove his videos and images from its website and advertising materials. Regenocyte
19 refused. Regenocyte was aware that Plaintiff is a resident of Clark County, Nevada and
20 its website is, and was, accessible in Clark County, Nevada.

21 The Complaint alleges the following claims: (1) breach of contract against
22 Regenocyte; (2) unjust enrichment against Regenocyte; (3) intentional misrepresentation
23 against all Defendants; (4) negligent misrepresentation against all Defendants; and (5)
24 copyright violation against Regenocyte and Intercellular. Moving Defendants now move
25 to dismiss the Complaint for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2)
26 and for improper venue under Fed. R. Civ. P. 12(b)(3). (Dkt. no. 23.) In the alternative,
27 they move to transfer venue. Plaintiff filed an opposition on June 3, 2013 ("Opposition").
28 (Dkt. no. 30.) Moving Defendants did not file a reply.

1 The Motion to Dismiss is limited in scope. Moving Defendants only argue that
2 Plaintiff has not shown that jurisdiction and venue are proper as to his copyright violation
3 claim. (Dkt. no. 23 at 2–3, 4–5.) The copyright violation claim is only asserted against
4 Regenocyte and Intercellular. Moving Defendants argue that once the copyright claim is
5 dismissed, the Court no longer has supplemental jurisdiction over the remaining claims.
6 (*Id.* at 2–3.)

7 III. DISCUSSION

8 A. Dismissal Pursuant to Rule 12(b)(2)

9 1. Legal Standard

10 “When a defendant moves to dismiss for lack of personal jurisdiction [under
11 Federal Rule of Civil Procedure 12(b)(2)], the plaintiff bears the burden of demonstrating
12 that the court has jurisdiction over the defendant.” *Pebble Beach Co. v. Caddy*, 453 F.3d
13 1151, 1154 (9th Cir. 2006). To meet this burden, a plaintiff must demonstrate that
14 personal jurisdiction over a defendant is (1) permitted under the applicable state's long-
15 arm statute and (2) that the exercise of jurisdiction does not violate federal due process.
16 *Id.* Courts must consider whether personal jurisdiction exists over each defendant
17 separately. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122,
18 1130 (9th Cir. 2003).

19 Federal courts have personal jurisdiction over defendants to the same extent as
20 the state courts “in the state in which the [federal] district court is located.” *Huffy Corp. v.*
21 *Overlord Indus.*, 246 F. Supp. 2d 1093, 1096 (D. Nev. 2003) (*quoting* Fed. R. Civ. P.
22 4(k)(1)(A)). Under Nevada's long-arm statute, a Nevada court “may exercise jurisdiction
23 over a party to a civil action on any basis not inconsistent with the [C]onstitution of
24 [Nevada] or the Constitution of the United States.” NRS § 14.065(1). Thus, “Nevada's
25 long-arm statute reaches the limits of due process set by the United States Constitution.”
26 *Baker v. Dist. Ct.*, 999 P.2d 1020, 1023 (Nev. 2000).

27 Due process requires that a nonresident defendant have minimum contacts with
28 the forum state such that the exercise of personal jurisdiction does not offend traditional

1 notions of fair play and substantial justice. *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316
2 (1945); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 838 (9th Cir.
3 1986). A defendant's conduct and connection with the forum must be such that the
4 defendant should reasonably anticipate being haled into court there. *Sher v. Johnson*,
5 911 F.2d 1357, 1361 (9th Cir.1990) (citing *World-Wide Volkswagen Corp. v. Woodson*,
6 444 U.S. 286, 297 (1980)).

7 The constitutional touchstone for determining whether an exercise of personal
8 jurisdiction comports with due process is "whether the defendant purposefully
9 established 'minimum contacts' in the forum [s]tate," *Burger King Corp. v. Rudzewicz*,
10 471 U.S. 462, 474 (1985) (quoting *Int'l Shoe Co.*, 326 U.S. at 316), and "that the
11 maintenance of the suit does not offend traditional notions of fair play and substantial
12 justice." *Id.* (internal quotation omitted). The "essential" inquiry is whether "the defendant
13 purposefully avails itself of the privilege of conducting activities within the forum State,
14 thus invoking the benefits and privileges of its laws." *Id.* at 475. These due process
15 concerns are satisfied by a finding of either general or specific jurisdiction.

16 2. Specific Jurisdiction Analysis

17 Specific jurisdiction is analyzed under a three-prong test: "(1) The non-resident
18 defendant must purposefully direct his activities or consummate some transaction with
19 the forum or resident thereof; or perform some act by which he purposefully avails
20 himself of the privilege of conducting activities in the forum, thereby invoking the benefits
21 and protections of its laws; (2) the claim must be one which arises out of or relates to the
22 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport
23 with fair play and substantial justice, i.e., it must be reasonable." *Schwarzenegger v.*
24 *Fred Martin Motor Co.*, 374 F.3d at 802 (quoting *Lake*, 817 F.2d at 1421). Plaintiff bears
25 the burden of satisfying the first two prongs. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th
26 Cir.1990). If Plaintiff does so, the burden then shifts to Moving Defendants to set forth a
27 "compelling case" that the exercise of jurisdiction would not be reasonable. *Burger King*
28 *Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985).

1 **a. Purposeful direction**

2 For the first prong of the specific jurisdiction analysis, the Ninth Circuit employs a
 3 purposeful direction analysis. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066,
 4 1076 (9th Cir. 2011) (*citing Schwarzenegger*, 374 F.3d at 802). In tort cases, the Ninth
 5 Circuit “typically inquire[s] whether a defendant ‘purposefully direct[s] his activities’ at the
 6 forum state, applying an ‘effects’ test that focuses on the forum in which the defendant’s
 7 actions were felt, whether or not the actions themselves occurred within the forum.”
 8 *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir.2006) (en
 9 banc). The “effects” test, which derives from the Supreme Court’s decision in *Calder v.*
 10 *Jones*, 465 U.S. 783 (1984), requires that “the defendant allegedly must have (1)
 11 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm
 12 that the defendant knows is likely to be suffered in the forum state.” *Brayton Purcell, LLP*
 13 *v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010) (*quoting Yahoo!*, 433 F.3d
 14 at 1206).

15 The Court finds that Plaintiff has met his burden with respect to the first prong of
 16 the specific jurisdiction analysis.

17 First, the Complaint alleges that Regenocyte committed intentional acts. It alleges
 18 that Regenocyte posted videos and images of Plaintiff on their website without a written
 19 agreement, and refused to take the videos and images down even after Plaintiff’s
 20 request. (Dkt. no. 1 at ¶¶ 65–70.)

21 Second, the Court concludes that Regenocyte is alleged to have expressly aimed
 22 its actions at Nevada. “[T]he express aiming requirement . . . is satisfied when ‘the
 23 defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom
 24 the defendant knows to be a resident of the forum state.’” *CollegeSource*, 653 F.3d at
 25 1077 (*quoting Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). The
 26 Complaint alleges that: (1) Regenocyte was aware that Plaintiff was a resident of
 27 Nevada (dkt. no. 1 at ¶77); (2) Plaintiff wired money to Regenocyte from Nevada for his
 28 treatment (*id.* at ¶¶17, 18); (3) Regenocyte contacted Plaintiff directly in Nevada (*id.* at

1 ¶20); and (4) Regenocyte knew its website could be accessed in Nevada (*id.* at ¶78).
2 Based on those allegations, the Court can conclude that Regenocyte's alleged wrongful
3 conduct was aimed at Plaintiff and that Defendants knew Plaintiff was a resident of
4 Nevada.

5 Finally, the Court concludes that the Complaint alleges that Regenocyte caused
6 "harm that the [D]efendant[s] know[] is likely to be suffered in the forum state." *Brayton*
7 *Purcell*, 606 F.3d at 1128 (quotation omitted). As the Court has concluded that the
8 Complaint alleges that Regenocyte knew Plaintiff was a resident of Nevada, knew that
9 Plaintiff wired money from Nevada, and knew their website as accessible in Nevada, it
10 follows that they knew that their wrongdoing would cause harm to Plaintiff in Nevada.

11 The Court finds, after consideration of the *Calder* effects test, that Regenocyte
12 purposefully directed its alleged activities towards Nevada.

13 As to Intercellular, a "parent-subsidary relationship alone is insufficient to attribute
14 the contacts of the subsidiary to the parent for jurisdictional purposes." *Harris Rutsky &*
15 *Co.*, 328 F.3d at 1134 (citations omitted). However, "a subsidiary's contacts may be
16 imputed to its parent for personal jurisdiction purposes where the subsidiary is the
17 parent's alter ego." *In re W. States Wholesale Natural Gas Litig.*, 605 F. Supp. 2d 1118,
18 1132 (9th Cir. 2009) (*citing Harris Rutsky & Co.*, 328 F.3d at 1134). To demonstrate that
19 a parent and its subsidiary are alter egos, the plaintiff must establish a prima facie case
20 that the two companies share "such unity of interest and ownership" that the companies'
21 separateness no longer exists and "failure to disregard [their separate identities] would
22 result in fraud or injustice." *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001)
23 (quotation omitted).

24 The Court finds that Plaintiff has made a prima facie showing that Regenocyte is
25 an alter ego of Intercellular. The Complaint alleges that: (1) "Intercellular's managers,
26 members, officers, employees and/or representatives control Regenocyte" and "use the
27 same office or business location and employ the same employees and contractors" (dkt.
28 no. 1 at ¶9); (2) Regenocyte is undercapitalized (*id.*); (3) "Intercellular and its agents and

1 representatives” did not “maintain arm’s length transactions between InterCellular and
2 Regenocyte” (*id.*); (4) funds and assets are comingled (*id.*); (5) InterCellular claims to
3 “follow in the footsteps” of Regenocyte (*id.* at ¶33); InterCellular does business at the
4 same address as Regenocyte (*id.* at ¶29); and (6) InterCellular was formed prior to
5 Regenocyte’s deactivation with the Florida Secretary of State (*id.* at ¶28). Moving
6 Defendants do not contest any of these allegations. The Court thus concludes that
7 Plaintiff has made a prima facie showing that Regenocyte is a “mere instrumentality” of
8 InterCellular and that failure to regard them as alter egos would promote abuse to the
9 corporate form. *See In re W. States Wholesale Natural Gas Litig.*, 605 F. Supp. 2d at
10 1133.

11 Regenocyte’s contacts therefore imputed to InterCellular for the purposes of the
12 Court’s jurisdiction analysis.

13 **b. Claim arising out of, or related to, forum activities**

14 Moving Defendants argue that Plaintiff’s claims “cannot be said to ‘arise out of’”
15 an “act within the state of Nevada” because no such act has been established. (Dkt. no.
16 23 at 5.) The Court disagrees. The Complaint alleges a claim for copyright violation
17 against Regenocyte and InterCellular that arises out of Regenocyte’s publication of
18 videos and images on a website accessible in Nevada. *See Mavrix Photo, Inc. v. Brand*
19 *Tech., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (finding this prong is satisfied where
20 “[plaintiff’s] claim of copyright infringement arises out of [defendant’s] publication of the
21 photos on a website accessible to users in the forum state.”) The Complaint also alleges
22 that Regenocyte was paid from Nevada and directed its communications to Plaintiff in
23 Nevada. The Court finds that this prong is satisfied

24 **c. Reasonableness**

25 As the first two prongs of the specific jurisdiction analysis have been satisfied, the
26 burden shifts to Moving Defendants to set forth a “compelling case” that the exercise of
27 jurisdiction would not be reasonable. *Burger King*, 471 U.S. at 476-78. In determining
28 whether the exercise of jurisdiction comports with “fair play and substantial justice” and is

1 therefore reasonable, courts in the Ninth Circuit consider seven factors: (1) the extent of
2 the defendants' purposeful injection into the forum state's affairs; (2) the burden on the
3 defendant of defending in the forum; (3) the extent of the conflict with the sovereignty of
4 the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the
5 most efficient judicial resolution of the controversy; (6) the importance of the forum to the
6 plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative
7 forum. *Dole Food*, 303 F.3d at 1114.

8 Moving Defendants address the first, second, fifth, and sixth of these factors. As
9 to the first factor, Moving Defendants argue that "there is no evidence that the
10 Defendants have had any contacts with the forum" (Dkt. no. 23 at 6.) The Court has
11 already determined that Regenocyte allegedly committed intentional acts directed at
12 Nevada, including accepting payment from Nevada, contacting Plaintiff in Nevada and
13 publishing Regenocyte's website in Nevada. These allegations indicate "purposeful
14 injection." See *CollegeSource*, 653 F.3d at 1080 ("Actions directed at a forum resident
15 expected to cause harm in the forum constitute purposeful injection.")

16 As to the second factor, Moving Defendants argue that the Defendants are all
17 located in Florida and that interstate travel and discovery will be expensive. (Dkt. no. 23
18 at 6, 8-9.) They estimate that litigating the case will be six times more expensive for
19 Defendants than Plaintiff, but provide no basis for this estimation. (*Id.* at 8-9.) "[W]ith the
20 advances in transportation and telecommunications and the increasing interstate
21 practice of law, any burden [of litigation in a forum other than one's residence] is
22 substantially less than in days past." *CollegeSource*, 653 F.3d at 1080 (*quoting Menken*
23 *v. Emm*, 503 F.3d 1050, 1060 (9th Cir. 2007). However, Defendants still must travel to
24 litigate in Nevada so this factor slightly favors Defendants.

25 As to the fifth factor, Moving Defendants similarly argue that it would be more
26 efficient to litigate in Florida because that's where many of the witnesses and much of
27 the evidence will be located. This factor tips in Moving Defendants' favor only slightly

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1 because the advances in travel and technology mean that there will not be a great
2 difference in efficiency between the forums.

3 As to the sixth factor, Defendants argue that “Nevada presents little importance to
4 Plaintiff’s interest in convenient and effective relief” and that “Florida actually has some
5 relationship to the underlying facts alleged in the Complaint, while Nevada’s connection
6 is attenuated at best” (Dkt. no. 23 at 6.) Plaintiff responds that Nevada has a
7 “manifest interest in protecting the rights and interests of one of its citizens” and that
8 Plaintiff has the right “to seek enforcement of his rights and collection of damages in this
9 case and should not be limited by forcing him to travel to another jurisdiction after
10 Defendants reached into Nevada and caused harm.” (Dkt. no. 30 at 10.) The Court
11 agrees with Plaintiff. Nevada has an interest in making sure that its citizens are protected
12 from misrepresentation and copyright violations. Further, as the Court previously found,
13 Regenocyte committed intentional acts directed at Nevada. This factor tips strongly in
14 Plaintiff’s favor.

15 After considering the *Burger King* factors, the Court concludes that Moving
16 Defendants have not shown that the exercise of jurisdiction over Regenocyte and
17 Intercellular as to the copyright violation claim would be unreasonable.

18 **B. Dismissal Pursuant to Rule 12(b)(3)**

19 Moving Defendants argue that venue is improper under Plaintiff’s federal
20 copyright claim. (Dkt. no. 23 at 2-3.) Civil suits related to copyrights may be brought “in
21 the district in which the defendant or his agent resides or may be found.” 28 U.S.C. §
22 1400(a). The Ninth Circuit has interpreted 28 U.S.C. § 1400(a) to mean that venue “is
23 proper in any judicial district in which the defendant would be amenable to personal
24 jurisdiction if the district were a separate state.” *Columbia Pictures Television v. Krypton*
25 *Broad. of Birmingham, Inc.*, 106 F.3d 284, 288 (9th Cir.1997), overruled on other
26 grounds by *Feltner v. Columbia Pictures Television*, 523 U.S. 340 (1998). Plaintiff and
27 Moving Defendants agree on this standard. (See dkt. no. 23 at 4; dkt. no. 30 at 5.)

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1 Moving Defendants argue that this action should be dismissed for improper venue
2 because the Court does not have personal jurisdiction as to the copyright claim. As the
3 Court has already determined that it has personal jurisdiction over the relevant parties
4 under Rule 12(b)(2), the Court will not dismiss the action for improper venue under Rule
5 12(b)(3).

6 **C. Motion to Transfer**

7 Defendants move to transfer venue to Florida under 28 U.S.C. § 1404(a) and 28
8 U.S.C. § 1406(a). However, § 1406(a) allows a court to dismiss or transfer a case only
9 where the case lays “venue in the wrong division or district” For example, courts
10 have used § 1406(a) to dismiss or transfer a case where the parties removed to the
11 wrong district court, *LNV Corp. v. STK Financial, LLC*, C 11–00025, 2011 WL 4345193
12 (N.D. Cal. Sept. 14, 2011), or where the court finds improper venue under Rule 12(b)(3),
13 *Ambriz v. Coca-Cola Co.*, 13-cv-03539, 2014 WL 296159 (N.D. Cal. Jan. 27, 2014).
14 Neither of those situations is present in this case. Further, Moving Defendants argue for
15 transfer under the factors that are considered in a § 1404(a) analysis. The Court thus
16 considers Moving Defendants’ motion pursuant to § 1404(a).

17 **1. Legal Standard**

18 28 U.S.C. § 1404(a) provides that “[f]or the convenience of parties and witnesses,
19 in the interest of justice a district court may transfer any civil action to any other district or
20 division where it might have been brought.” *Amazon.com v. Cendant Corp.*, 404 F. Supp.
21 2d 1256, 1259 (W.D. Wash. 2005). “The purpose of this section is to prevent the waste
22 of time, energy, and money and to protect litigants, witnesses and the public against
23 unnecessary inconvenience and expense.” *Id.* (citations and quotation marks omitted).

24 Motions to transfer venue are considered on “an individualized, case-by-case
25 consideration of convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d
26 495, 498 (9th Cir. 2000) (internal quotation marks omitted). “[28 U.S.C. § 14041(a)] has
27 two requirements on its face: (1) that the district to which defendants seek to have the
28 action transferred is one in which the action might have been brought, and (2) that the

1 transfer be for the convenience of parties and witnesses, and in the interest of justice.”
2 *Amazon.com*, 404 F. Supp. 2d at 1259 (W.D. Wash. 2005) (citation and quotation marks
3 omitted).

4 “A motion to transfer venue under § 1404(a) requires the court to weigh multiple
5 factors in its determination whether transfer is appropriate in a particular case.” *Jones*,
6 211 F.3d at 498. “For example, the court may consider: (1) the location where the
7 relevant agreements were negotiated and executed, (2) the state that is most familiar
8 with the governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’
9 contacts with the forum, (5) the contacts relating to the plaintiff’s cause of action in the
10 chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the
11 availability of compulsory process to compel attendance of unwilling non-party
12 witnesses, and (8) the ease of access to sources of proof.” *Id.* at 498-99. The burden of
13 proof is on the moving party. *Amini Innovation Corp. v. JS Imports, Inc.*, 497 F.Supp.2d
14 1093, 1109 (C.D. Cal. 2007).

15 2. Analysis

16 The relevant factors weigh against a transfer of venue under 28 U.S.C. § 1404(a).
17 As to the first factor, it is not clear where the relevant agreements were negotiated and
18 executed. Moving Defendants state that the “underlying agreements in this case were
19 presumably negotiated and executed in Florida as described in the Complaint.” (Dkt. no.
20 23 at 8.) But Moving Defendants do not cite to the portions of the Complaint that suggest
21 that conclusion, nor can the Court locate any. The Complaint is vague as to where the
22 agreements were negotiated and executed. The Court therefore finds that this factor
23 does not weigh in either direction.

24 As to the second factor, Moving Defendants state that “neither Florida nor Nevada
25 can claim more familiarity with the governing law” in this case. (*Id.*) This factor, therefore,
26 does not favor Plaintiff or Defendants.

27 As to the third factor, generally speaking, Plaintiff’s choice of venue is entitled to
28 deference and typically should not be disturbed. *Stewart Org., Inc. v. Ricoh Corp.*, 487

1 U.S. 22, 29 (1988). Moving Defendants argue that, in a copyright violation case,
2 Plaintiff's choice of venue is entitled to less deference when Defendants "developed,
3 tested, researched, produced, marketed, and made sales decisions" concerning the
4 product outside Plaintiff's chosen venue. (Dkt. no. 23 at 8.) In support of that argument,
5 Moving Defendants cite to two patent infringement cases: *Saint-Gobain Calmar, Inc. v.*
6 *National Products*, 230 F. Supp. 2d 655, 660 (E.D. Pa. 2002), and *S.C. Johnson & Son,*
7 *Inc. v. Gillette, Co.*, 571 F. Supp. 1185, 1187–88 (N.D. Ill. 1983). Patent infringement
8 cases are unique, however, because 28 U.S.C. § 1400(b) specifically states that they
9 may only be brought "where the defendant resides, or where the defendant has
10 committed acts of infringement and has a regular and established place of business."
11 That requirement is not present in 28 U.S.C. § 1400(a), which governs copyright
12 disputes. Further, in both of the cases cited by Moving Defendants, the courts found it
13 significant that the plaintiffs were not residents of their chosen forum. *See Saint-Gobain*
14 *Calmar*, 230 F. Supp. 2d at 659; *S.C. Johnson & Son*, 571 F. Supp. 2d at 1187. Moving
15 Defendants have not successfully shown that Plaintiff's choice of venue is not entitled to
16 deference in this case. Therefore, this factor weighs in favor of Plaintiff.

17 As to the fourth and fifth factors, Moving Defendants argue that "[t]he respective
18 parties' contact with Nevada, as well as those relating to the causes of action in the
19 Complaint, are infinitesimal[.]" (Dkt. no. 23 at 8.) While Defendants' overall contact with
20 Nevada may be minimal, the Court previously found that Regenocyte and Intercellular
21 directed activities towards Nevada that relate to Plaintiff's cause of action. Given that
22 Plaintiff resides in Nevada, Regenocyte published videos and images on a website
23 accessible in Nevada, Plaintiff made payment to Regenocyte from Nevada and
24 Regenocyte contacted Plaintiff in Nevada, the Court finds that the fourth and fifth factors
25 tip slightly in Plaintiff's favor.

26 As to the sixth factor, Moving Defendants state that filing costs will be the same
27 but "air fare, lodging, meals, and so on will cost six times as much for the Defendants
28 and their counsel as for Plaintiff and his counsel, and when one takes into consideration

1 the likelihood of taking depositions and otherwise conducting discovery, the comparative
2 costs are apparent.” (Dkt. no. 23 at 9.) Moving Defendants don’t explain why travel
3 would be more expensive for Defendants. Plaintiff would have to also pay for air fare,
4 lodging and meals if the case were tried in Florida. As far as taking depositions, it is
5 Plaintiff who will likely have to fly to Florida to depose witnesses. The Court cannot
6 conclude that either Plaintiff or Defendants will have to spend more on litigation either
7 way.

8 As to the seventh factor, Moving Defendants state that compulsory process will be
9 “much more readily available” in Florida because that’s where witnesses are likely to be
10 located. (*Id.*) The Court cannot address this factor at this stage. Neither party has
11 presented the Court with a list of witnesses and Moving Defendants do not make any
12 specific arguments as to why compulsory process would not be available in Nevada.
13 This factor does not tip either way.

14 Finally, as to the eighth factor, Moving Defendants argue that any evidence to
15 discover will likely be located in Florida. (*Id.*) The Court agrees but electronic production
16 allows all parties easy access to new sources of evidence. This factor tips slightly in
17 Defendants’ favor.

18 On balance the *Jones* factors disfavor transferring this case to Florida. Nevada is
19 Plaintiff’s preferred choice of forum, Plaintiff resides in Nevada, and many of the actions
20 giving rise to the dispute occurred in, or were directed towards, Nevada. Although it
21 would be more convenient for Defendants to litigate in Florida, it would be less
22 convenient for Plaintiff. Section 1404(a) “provides for transfer to a more convenient
23 forum, not to a forum likely to prove equally convenient or inconvenient, and a transfer
24 should not be granted if the effect is simply to shift the inconvenience to the party
25 resisting the transfer.” *K-Tel Int’l, Inc. v. Tristar Prods., Inc.*, 169 F. Supp. 2d 1033, 1045
26 (D.Minn.2001).

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1 **IV. CONCLUSION**

2 It is therefore ordered that Moving Defendants' Motion to Dismiss (dkt. no. 23) is
3 denied.

4 It is further ordered that Moving Defendants' Motion to Transfer (dkt. no. 24) is
5 denied.

6 DATED THIS 3rd day of February 2014.

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9 MIRANDA M. DU
10 UNITED STATES DISTRICT JUDGE
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